

SEALoader SHIPPING CORPORATION, PETITIONER, VS. GRAND CEMENT MANUFACTURING CORPORATION, JOYCE LAUNCH & TUG CO., INC., ROMULO DIANTAN & JOHNNY PONCE, RESPONDENTS.

G.R. No. 167363. December 15, 2010

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

For consideration of the Court are two Petitions for Review on Certiorari[1] under Rule 45 of the Rules of Court, both seeking to challenge the Amended Decision[2] dated March 3, 2005 of the Court of Appeals in CA-G.R. CV No. 65083. The Amended Decision reduced by 50% the award of actual damages that was previously granted in the Decision[3] dated April 19, 1999 of the Regional Trial Court (RTC) of Cebu City, Branch 58, in Civil Case No. CEB-16602 and affirmed by the Court of Appeals in its earlier Decision[4] dated November 12, 2004.

The antecedents of the case are presented hereunder:

Sealoder Shipping Corporation (Sealoder) is a domestic corporation engaged in the business of shipping and hauling cargo from one point to another using sea-going inter-island barges.[5] Grand Cement Manufacturing Corporation (now Taiheiyo Cement Philippines, Inc.), on the other hand, is a domestic corporation engaged in the business of manufacturing and selling cement through its authorized distributors and, for which purposes, it maintains its own private wharf in San Fernando, Cebu, Philippines.[6]

On March 24, 1993, Sealoder executed a Time Charter Party Agreement[7] with Joyce Launch and Tug Co., Inc. (Joyce Launch), a domestic corporation, which owned and operated the motor tugboat M/T Viper. By virtue of the agreement, Sealoder chartered the M/T Viper in order to tow the former's unpropelled barges for a minimum period of fifteen days from the date of acceptance, renewable on a fifteen-day basis upon mutual agreement of the parties.[8]

Subsequently, Sealoder entered into a contract with Grand Cement for the loading of cement clinkers and the delivery thereof to Manila. On March 31, 1994, Sealoder's barge, the D/B Toploader, arrived at the wharf of Grand Cement tugged by the M/T Viper. The D/B Toploader, however, was not immediately loaded with its intended cargo as the employees of Grand Cement were still loading another vessel, the Cargo Lift Tres.

On April 4, 1994, Typhoon Bising struck the Visayas area, with maximum recorded winds of 120 kilometers per hour. Public storm signal number 3 was raised over the province of Cebu. The D/B Toploader was, at that time, still docked at the wharf of Grand Cement. In the afternoon of said date, as the winds blew stronger and the waves grew higher, the M/T Viper tried to tow the D/B Toploader away from the wharf. The efforts of the tugboat were foiled, however, as the towing line connecting the two vessels snapped. This occurred as the mooring lines securing the D/B Toploader to the wharf were not cast off. The following day, the employees of Grand Cement discovered the D/B Toploader situated on top of the wharf, apparently having rammed the same and causing

significant damage thereto.

On October 3, 1994, Grand Cement filed a Complaint for Damages[9] against Sealoader; Romulo Diantan, the Captain of the M/T Viper; and Johnny Ponce, the Barge Patron of the D/B Toploader. The complaint was docketed as Civil Case No. CEB-16602 before the RTC of Cebu City, Branch 58. Grand Cement claimed, among others, that when the D/B Toploader arrived at its wharf on March 31, 1994, the same was not properly secured. Likewise, the storm warnings for Typhoon Bising were allegedly circulated to the public as early as 6:00 a.m. of April 4, 1994 through radio and print media. Grand Cement stated that after it received the weather updates for that day, it immediately advised Romulo Diantan and Johnny Ponce to move their respective vessels away from the wharf to a safer berthing area. Both men allegedly refused to do so, with Romulo Diantan even abandoning the D/B Toploader in the critical hours in the afternoon. Because of the strong winds of Typhoon Bising, the D/B Toploader was forced to smash against the wharf of Grand Cement. On April 7, 1994, Grand Cement sent a letter[10] addressed to Johnny Ponce, demanding the payment of the cost of the damage to the wharf in the amount of P2,423,318.58. As Grand Cement still failed to receive a reply, it sought the assistance of the Coast Guard Investigation Service Detachment in Cebu. The said office scheduled consecutive hearings, but Sealoader allegedly did not appear. Hence, Grand Cement filed the complaint, praying that the defendants named therein be ordered to pay jointly and severally the amount of P2,423,318.58 as actual damages, plus P1,000,000.00 as compensatory damages, P200,000.00 as attorney's fees, and P100,000.00 as litigation expenses and other costs.

On November 25, 1994, Sealoader filed a motion to dismiss[11] the complaint. Sealoader insisted that Joyce Launch should have been sued in its stead, as the latter was the owner and operator of the M/T Viper. Having complete physical control of the M/T Viper, as well as the towing, docking, mooring and berthing of the D/B Toploader, Sealoader maintained that Joyce Launch should be held liable for the negligent acts of the latter's employees who were manning the M/T Viper.

Before the RTC could hear the above motion, Grand Cement filed on December 14, 1994, an Amended Complaint,[12] impleading Joyce Launch as one of the party defendants. The RTC admitted the Amended Complaint and ordered that summons be issued to Joyce Launch.[13]

On January 2, 1995, Sealoader instituted a Cross-claim[14] against Joyce Launch and Romulo Diantan. Sealoader reiterated that the M/T Viper was under the complete command, control, supervision and management of Joyce Launch through Romulo Diantan and the crew, all of whom were employed by Joyce Launch. Sealoader posited that Joyce Launch had the sole duty and responsibility to secure the M/T Viper and the D/B Toploader in order to avert any damage to the properties of third parties. Thus, Sealoader pleaded that, should it be adjudged liable to pay the damages sought by Grand Cement, Joyce Launch should likewise be ordered to reimburse Sealoader any and all amounts that the latter is ordered to pay.

On January 4, 1995, Sealoader filed its Answer[15] to the amended complaint, maintaining that it only had the right to use the M/T Viper for the purposes for which the tugboat was chartered and nothing more. Sealoader pointed out that Grand Cement did not initiate the loading of the D/B Toploader notwithstanding the fact that the said barge had been docked at the latter's wharf long before Typhoon Bising came on April 4, 1994. As the typhoon was a force majeure, the damage it brought upon the wharf of Grand Cement was allegedly beyond the control of Sealoader. The Clearing Officer of Sealoader, Emar Acosta, also appeared before the Coast Guard Investigation Service Detachment in Cebu to testify on the circumstances that occurred when Typhoon Bising struck. Sealoader also instituted a counterclaim against Grand Cement and sought the payment of exemplary damages, attorney's fees and expenses of litigation.

On March 14, 1995, Joyce Launch posted its Answer[16] to the cross-claim of Sealoader, asserting that the

damage sustained by the wharf of Grand Cement was not due to the gross negligence of the M/T Viper crew but due to the force majeure that was Typhoon Bising. Joyce Launch also claimed that the wharf was not equipped with rubber fenders and finger jutes, such that the same could easily be damaged by strong waves and winds even without any vessel berthed thereat. When the typhoon struck, the employees of Grand Cement allegedly abandoned the wharf, thus, leaving the crew of the M/T Viper helpless in preventing the D/B Toploader from ramming the wharf. Joyce Launch likewise faulted Grand Cement's employees for not warning the crew of the M/T Viper early on to seek refuge from the typhoon.

In its Answer^[17] to the amended complaint, Joyce Launch reprised its argument that the resultant damage to the wharf of Grand Cement was brought about by a fortuitous event, of which it was belatedly warned. Joyce Launch insisted that, if only the loading of the D/B Toploader proceeded as scheduled, the M/T Viper could have tugged the barge away from the wharf before the typhoon struck. Joyce Launch prayed for the dismissal of the complaint and the cross-claim against it, as well as the payment of attorney's fees and litigation expenses, by way of counterclaim against Grand Cement.

The trial of the case ensued thereafter.

On May 14, 1997, Grand Cement presented ex parte its first witness, Rolando Buhisan, in order to establish the factual allegations in the complaint and to prove the damages sought therein.^[18] Buhisan stated that, in 1994, he became the head of the civil engineering department of Grand Cement. The primary duty of the said office was to estimate expenses, as well as to investigate or inspect the implemented projects under the said department.^[19] Buhisan related that on April 5, 1994, he was instructed to investigate the damage caused by the D/B Toploader on the wharf of Grand Cement.^[20] After inspecting the damage on the top and bottom sides of the pier, Buhisan immediately made an estimate of the total cost of repairs and sent it to the Senior Vice President of Grand Cement.^[21] On April 17, 1994, Grand Cement sent a letter to Johnny Ponce, the Barge Patron of the D/B Toploader, demanding that he pay the estimated cost of damage.^[22] The demand, however, was not paid.^[23] Buhisan said that the estimated total cost was about P2,640,000.00, more or less.^[24]

The next witness also put forward ex parte by Grand Cement, on May 16, 1997, was Wennie C. Saniel. As the Corporate Affairs Manager of Grand Cement, Saniel testified that he was responsible for keeping the company documents and was likewise in charge of the internal and external functions of the company, the claims for damages, and the keeping of the policies required for minor claims.^[25] Saniel pertinently stated that, on April 4, 1994, he gave instructions for the pullout of the D/B Toploader from the wharf in view of the incoming typhoon.^[26] As the instructions were ignored, Grand Cement resultantly suffered damages estimated to be around P2.4 million.^[27] The cost of repairs made on the wharf was P2,362,358.20.^[28]

Subsequently, in an Order^[29] dated November 12, 1997, the RTC granted the manifestation of Grand Cement to drop Romulo Diantan as a party defendant. The latter was, at that time, already working abroad and cannot be served with summons and a copy of the complaint.

On February 26, 1998, the RTC granted^[30] the motion of Sealoader to take the testimonies of its witnesses by depositions upon written interrogatories.

Thus, on March 16, 1998, the deposition^[31] of Marita S. Santos was taken by Sealoader in order to prove that the damage to the wharf of Grand Cement was caused by force majeure, as well as the negligent acts and omissions of Grand Cement and Joyce Launch. Santos declared that she was the General Manager of Sealoader. She related that Sealoader and Joyce Launch entered into a Time Charter Party Agreement on March 24, 1993.^[32] In accordance with the contract, Joyce Launch would provide a tugboat, the M/T Viper, to tow the barge of Sealoader. On March 31, 1994, Sealoader's barge, the D/B Toploader, was towed by the M/T Viper to the wharf

of Grand Cement in San Fernando, Cebu. Upon arrival, Sealoader's Clearing Officer, Emar Acosta, notified Grand Cement that the D/B Toploader was ready to load. The crew of the barge then waited as Grand Cement had three days from notice to load cargo into the barge. Despite waiting for several days, Santos averred that Grand Cement did not load the barge. Santos explained that there are demurrage charges if Grand Cement failed to complete the loading within three days from the commencement thereof. In the afternoon of April 4, 1994, the crew of the D/B Toploader received notice that Typhoon Bising was expected to batter the Cebu province. The crew then looked for Romulo Diantan, the captain of the M/T Viper, to direct him to tow the barge to a safer place.[33] At around 3:00 p.m., the crew of the barge found Diantan trying to maneuver the M/T Viper to tow the D/B Toploader away from the wharf. The M/T Viper failed to tow the barge since the mooring lines were not cast off and the arrastre responsible for the same were not at the wharf. The towing line connecting the M/T Viper to the D/B Toploader then snapped with the force of the strong winds and the weight of the vessels. The crew of the M/T Viper tried to connect another towing line to the D/B Toploader but they failed to do so because of the big waves. The M/T Viper drifted away to the Bohol area, while the D/B Toploader ran aground.[34]

Santos contended that Sealoader was not liable for the damage given that the wharf was still under construction at that time and Grand Cement was completely responsible for the pulling out of the vessels docked therein.[35] Also, had Grand Cement loaded the D/B Toploader with cargo before April 4, 1994, the accident could have been averted. Santos further stressed that, since the D/B Toploader had no engine, the M/T Viper was responsible for towing the barge to safety. Finally, Santos asserted that Typhoon Bising was an act of God; hence, the parties had to suffer their respective losses.[36]

In reply to the written cross-interrogatories submitted by the counsel of Grand Cement, Santos stated that, after Sealoader chartered the M/T Viper, they communicated with the tugboat by means of SSB radio and sometimes through messages with other vessels. The SSB radio of Sealoader was allegedly operational on the months of March and April 1994. Santos declared that Sealoader gets weather forecasts twice a day, every 12 hours, from the Japan Meteorological Company.[37] Santos admitted that Sealoader received the weather bulletin issued by PAGASA regarding Typhoon Bising at 5:00 a.m. of April 3, 1994. Sealoader, however, was not able to relay the information to the M/T Viper as radio reception was poor. Sealoader tried to communicate through the operator of another vessel, the Tugboat BJay, but the reception was likewise weak. Consequently, the succeeding weather forecasts were also not conveyed to the M/T Viper.[38]

The deposition of Emar A. Acosta was also taken by Sealoader on March 16, 1998 to negate the alleged liability of Sealoader to Grand Cement. Acosta stated that he was the Clearing Officer of Sealoader from 1992 to 1997. On March 31, 1994, he was on board the M/T Viper, which tugged the D/B Toploader to the wharf of Grand Cement. Upon their arrival on said date, Acosta informed Grand Cement, through the latter's representative Jaime Nobleza, that the D/B Toploader was ready to be loaded.[39] Nobleza supposedly told Acosta to wait as another vessel was being loaded at that time. Thereafter, on April 4, 1994, Typhoon Bising struck. At around 3:00 p.m. of said date, Romulo Diantan tried to steer the M/T Viper in an effort to pull the D/B Toploader away from the wharf, as the waves grew stronger. The lines between the vessels snapped as the D/B Toploader was still moored to the wharf. The arrastre were supposed to cast off the mooring lines but there was nobody on the wharf during the typhoon.[40] Acosta explained that the M/T Viper did not tow the D/B Toploader before the typhoon intensified because there were no instructions from Nobleza to pull out from the wharf. Acosta pointed out that the employees of Grand Cement were still loading another vessel at around 1:00 p.m. on April 4, 1994.[41] Lastly, Acosta presented the Sworn Statement[42] he executed before the Coast Guard on July 26, 1994 to affirm the truth of his statements in connection with the incident in question.

Acosta also answered written cross-interrogatories submitted by the counsel of Grand Cement on July 9, 1998.

Upon being asked if he had the authority to direct where and when the D/B Toploader and the M/T Viper will go, Acosta answered in the affirmative. He likewise acknowledged that he was authorized to order the withdrawal of the vessels from any wharf at any given time, through the captain of the M/T Viper. Acosta added that he first came to know of the typhoon when Romulo Diantan told him so, while the latter was maneuvering the M/T Viper away from the wharf. Acosta claimed that it was not his duty to receive weather forecasts and the same was gathered by the crew of the M/T Viper.[43] Acosta also said that the D/B Toploader was equipped with a handheld radio, while the M/T Viper had a SSB radio. Acosta further stated that he did not order the withdrawal of the D/B Toploader away from the wharf because they were waiting for Grand Cement to load their barge and he had no knowledge of the typhoon until it struck the wharf.[44]

On November 4, 1998, Grand Cement called on Jaime Nobleza to the witness stand in order to rebut the testimonies of Santos and Acosta. Nobleza testified that he was the Ward Coordinator of Grand Cement from 1993-1995, whose duties were to monitor the loading operations at the Grand Cement pier, to oversee the general situation therein, and to receive and disseminate information to the vessels and his superior.[45] Nobleza contradicted the statement of Acosta that there was no instruction to pull the D/B Toploader away from the wharf. Nobleza said that Acosta was aware of the typhoon as early as April 3, 1994. When Nobleza learned that typhoon signal number 1 was raised in the Central Visayas region, he discussed the same with Acosta and advised him of the possible towing of the D/B Toploader to a safer place. Acosta allegedly told Nobleza that the typhoon was still far. At about 9:00 a.m. on April 4, 1994, Nobleza boarded the D/B Toploader and advised Acosta to remove the barge from the wharf since the weather was already deteriorating. Acosta did not heed the instructions and instead told Nobleza that the anchor of the vessel and the cable wire attached thereto were strong enough to withstand the typhoon.[46] The last time that Nobleza directed Acosta to pull out the barge from the wharf was at 2:00 p.m. on April 4, 1994. About 15 minutes thereafter, the operations of the wharf were suspended. Contrary to the claim of Acosta, Nobleza averred that during the typhoon, he was at the wharf along with a roving guard and four other people from the arrastre.[47]

Nobleza further testified that he did not receive any request for the casting off of the mooring lines, which connected the D/B Toploader to the wharf. Nobleza said that it was also not proper to simply cast off the mooring lines without the proper coordination with the crew of the barge because the vessel might no longer be maneuvered and would drift out to sea.[48] Anent the alleged failure of Grand Cement to load cargo on the D/B Toploader on time, Nobleza countered that Santos was aware of this since the latter was told that the barge will be loaded only after the loading of the Cargo Lift Tres was completed.[49]

On cross-examination, Nobleza articulated that Grand Cement took days to load just one vessel because the sea was not cooperative and they had to stop loading at times. At around 9:00 a.m. on April 4, 1994, despite telling Acosta to pull out the D/B Toploader from the wharf, Nobleza admitted that they did not suspend the loading of the Cargo Lift Tres. He explained that the vessel was grounded in the shallow waters and it was already loaded with clinkers.[50] Nobleza testified that he remained at the vicinity of the wharf at around 4:00 p.m. on April 4, 1994.[51]

Finally, on December 9, 1998, Sealoader presented Renee Cayang as a surrebuttal witness to prove that Nobleza was not at the wharf when Typhoon Bising struck. Cayang stated that he was the Assistant Barge Patron of the D/B Toploader at the time of the incident on question. On April 4, 1994, he was on board the D/B Toploader.[52] Cayang testified that he did not see Nobleza either on board the D/B Toploader, before the typhoon struck, or at the wharf at the time of the typhoon. Cayang also asserted that there was nobody at the wharf at that time.[53]

At his cross-examination, Cayang said that, during the entire afternoon of April 4, 1994, he stayed inside the compartment of the D/B Toploader where the officers were usually stationed.[54] Cayang revealed that they were

waiting for the master of the barge to arrive. When asked if there was a radio on board the barge, Cayang replied in the negative. He also disclosed that nobody notified them of the typhoon and they only came to know about the same when their vessel was hit.[55] Cayang stated that Nobleza stayed in the guardhouse of Grand Cement on April 4, 1994 and the latter did not go to the wharf.[56] Cayang alleged that, on their end, there was no advice to pull out the D/B Toploader and that was why they were waiting for somebody to cast off the mooring lines. On re-direct examination, however, Cayang said that there were stevedores present at that time who were in a position to cast off the mooring lines.[57]

On April 19, 1999, the RTC rendered a decision on Civil Case No. 161602, declaring that:

From the evidence adduced, the Court is of the view that the defendants are guilty of negligence, which caused damage to the [Grand Cement's] wharf. The defendants' negligence can be shown from their acts or omissions, thus: they did not take any precautionary measure as demanded or required of them in complete disregard of the public storm signal or warning; the master or captain or the responsible crew member of the vessel was not in the vessel, hence, nobody could make any move or action for the safety of the vessel at such time of emergency or catastrophe; and the vessel was not equipped with a radio or any navigational communication facility, which is a mandatory requirement for all navigational vessels.

On the second issue: Re: Damages. - As the defendants are guilty of negligence, [Grand Cement] is entitled to recover damages from them. Even the failure of the defendants to equip their vessel with the communication facility, such as radio, such failure is undisputedly a negligence. x x x Had defendants been mindful enough to equip their vessel with a radio, a responsible crew member of the vessel would have been informed through the radio of the incoming typhoon and the notice from the [Grand Cement] about the said typhoon would have been of no concern to the defendant and/or the responsible crew members of the vessel. The safety of the vessel and the avoidance of injury or damage to another should be the primary concern of the defendants and/or the crew members themselves.

x x x x

The damage to [Grand Cement's] private wharf was caused by the negligence of both defendants Sealoader and Joyce Launch as well as their employees, who are the complements of the barge Toploader and the tugboat M/T Viper. Said defendants are also responsible for the negligence of their employees, as the law says:

"Art. 2180. The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those persons for whom one is responsible.

x x x x

Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry." (Civil Code)

The Court finds sufficient and competent evidence to award [Grand Cement] actual or compensatory damages in the amount of P2,362,358.20 x x x. Likewise, as [Grand Cement] has engaged the services of counsel because of defendants' act or omission and has incurred expenses to protect its interest (Art. 2208, par. (2), Civil Code), [Grand Cement] should recover the sum of P50,000.00 as attorney's fees and another sum of P10,000.00 as litigation expenses. The defendants are held liable to pay all these damages, and their liability is solidary (Art. 2194, Civil Code).

As to the counterclaim, considering the findings of Court, which are adverse to the defendants, the counterclaim has become without basis, hence, should be dismissed.

WHEREFORE, premises considered, judgment is hereby rendered in favor of [Grand Cement] and against the

defendants by ordering the defendants Sealoader Shipping Corporation, Joyce Launch and Tug Company, Inc. and Johnny Ponce to pay jointly and severally to the [Grand Cement] the sum of Pesos Two Millions Three Hundred Sixty Two Thousand Three Hundred Fifty Eight and 20/ centavos (P2,362,358.20) as actual or compensatory damages, the sum of Fifty Thousand Pesos (P50,000.00) as attorney's fees, the sum of Ten Thousand Pesos (P10,000.00) as litigation expenses, and the costs of the suit.

The counterclaim is hereby dismissed.[58]

Sealoader appealed the above ruling with the Court of Appeals, which appeal was docketed as CA-G.R. CV No. 65083. On the other hand, Joyce Launch and Johnny Ponce no longer questioned the trial court's decision.

Before the appellate court, Sealoader argued that the RTC erred in: (1) finding that the damage to the wharf of Grand Cement was caused by the negligence of Sealoader; (2) holding Sealoader liable for damages despite the fact that it was Grand Cement that had the last clear chance to avert the damage; (3) not holding that Grand Cement was negligent for not loading the vessel on time; and (4) giving credence to the afterthought testimony of Grand Cement's rebuttal witness.[59]

In its Decision dated November 12, 2004, the Court of Appeals found no merit in the appeal of Sealoader, adjudging thus:

On the first and second assignment of error, Sealoader attributes the cause of the damage to the negligence of Grand Cement for not casting off the mooring lines of the barge at the height of the typhoon despite their having the last clear chance to avert any damage. We find this contention untenable.

x x x x

Indeed, the people at the wharf could not just cast off the mooring lines absent any instructions from the crew of the vessels to do so, considering that the barge was a dumb boat, i.e., without a propeller. In view of this, Sealoader can not fault the people at the wharf for not acting. Although Sealoader presented a Mr. Renee Cayang, Assistant Patron of D/B "Toploader", to rebut Mr. Nobleza's testimony, the same did not reveal that any command for the release of the mooring lines was made. Mr. Cayang's testimony revealed that they had no radio on board x x x and that there were stevedores present at that time x x x.

Second, good seamanship dictates that, in cases of departure under extraordinary circumstances, as in the case at bench, the tugboat's crew has the obligation to cut off their mooring lines. The records reveal that the crew did try to cut off the mooring lines but were unsuccessful due to the big waves. Consequently, the towing lines between M/T "Viper" and D/B "Toploader" snapped. x x x.

Going to the third assignment of error, Sealoader contends that Grand Cement was negligent for not loading the vessel on time. Yet again, we find this to be untenable. x x x. With the knowledge that a storm was approaching, prudence would have dictated them to tug the barge to shelter and safety at the earliest possible time. Instead, they waited until the last minute to take action which was already too late. Their experience would have prompted them to take precautionary measures considering that the weather and the sea are capricious. Whether Grand Cement was late in loading the barge or not is of no moment. It was the judgment of the vessels' captain and patron that was crucial.

As to the last assignment of error regarding the rebuttal witness of Grand Cement, we find no reversible error committed by the court a quo in giving credence to the testimony of the said witness. The defendant-appellant and defendants-appellees were given chance to cross-examine the witness. Moreover, no documentary or testimonial evidence was given to rebut the crucial testimony that no command from the vessel was given to the people at the wharf to release the mooring lines.

WHEREFORE, in view of all the foregoing premises, judgment is hereby rendered by us DISMISSING the

appeal filed in this case. The decision dated April 19, 1999 rendered by the Regional Trial Court, Branch 58 in Cebu City in Civil Case No. CEB-16602 is hereby AFFIRMED.[60]

On December 9, 2004, Sealoader filed a Motion for Reconsideration[61] of the above decision, arguing that the obligation to pay the damages sustained by Grand Cement did not require solidarity given that Joyce Launch was solely liable therefor. Sealoader insisted that the D/B Toploader would not have rammed the wharf if the M/T Viper had towed the barge to safety on the morning of April 4, 1994. Sealoader also asserted that the delay in the loading of the D/B Toploader partly contributed to the resulting damage to the wharf.

On March 3, 2005, the Court of Appeals issued an Amended Decision in CA-G.R. CV No. 65083, finding the above stated motion of Sealoader partly meritorious. While upholding its earlier finding that Sealoader was negligent, the appellate court determined that:

Like Sealoader, Grand Cement did not take any precaution to avoid the damages wrought by the storm. Grand Cement waited until the last possible moment before informing Sealoader and Joyce about the impending storm. In fact, it continued loading on another vessel (Cargo Lift 3) until 2:15 p.m. of April 4, 1994 (transcript of the testimony of Jaime Nobleza, pp. 10-11) or roughly just before the storm hit. It is no wonder that Sealoader did not immediately move away from the pier since the owner of the pier, Grand Cement, was continuing to load another vessel despite the fast approaching storm. As for the conduct of Grand Cement when the storm hit, we find the testimony of Sealoader's witness that there were no employees of Grand Cement manning the pier to be more convincing. In totality, we find that Grand Cement also did not exercise due diligence in this case and that its conduct contributed to the damages that it suffered.

Article 2179 of the New Civil Code states that where the plaintiff's negligence was only contributory, the immediate and proximate cause of the injury being the defendant's lack of due care, the plaintiff may recover damages, the courts shall mitigate the damages to be awarded. Contributory negligence is conduct on the part of the plaintiff which falls below the standard to which he should conform for his own protection and which is legally contributing cause, cooperating with the negligence of the defendant in bringing about the plaintiff's harm. x x x

Due to its contributory negligence, Grand Cement must carry part of the brunt of the damages. This Court finds it equitable that Grand Cement should bear FIFTY PER CENT (50%) or half of the actual damages. The other pronouncements of the court regarding attorney's fees, litigation expenses and cost of suit shall, however, not be disturbed.

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us PARTIALLY MODIFYING our earlier judgment by reducing the award for actual damages by FIFTY PER CENT (50%) or HALF.[62]

Grand Cement filed a Motion for Reconsideration[63] of the Amended Decision but the Court of Appeals denied the same in a Resolution[64] dated February 20, 2007.

Desirous of having the Amended Decision overturned, Sealoader and Grand Cement each filed their separate Petitions for Review on Certiorari before this Court, which petitions were docketed as G.R. No. 167363 and G.R. No. 177466, respectively. In a Resolution[65] dated August 6, 2008, the Court ordered the consolidation of the two petitions, as the same involved identical parties, identical sets of facts, and both petitions assailed the Amended Decision dated March 3, 2005 of the Court of Appeals in CA-G.R. CV No. 65083.

Issues

In G.R. No. 167363, Sealoader raised the following issues in its Memorandum, to wit:

I

WHILE THE HONORABLE COURT OF APPEALS WAS CORRECT IN RULING THAT GRAND CEMENT WAS GUILTY OF NEGLIGENCE, IT COMMITTED REVERSIBLE ERROR IN NOT HOLDING THAT GRAND CEMENT WAS BARRED FROM RECOVERING DAMAGES UNDER THE DOCTRINE OF LAST CLEAR CHANCE.

II

THE COURT OF APPEALS AND THE TRIAL COURT DEPARTED FROM THE USUAL COURSE OF JUDICIAL PROCEEDINGS IN REFUSING TO DETERMINE THE ULTIMATE RIGHTS AND OBLIGATIONS OF PETITIONER [SEALoader] AND RESPONDENT JOYCE LAUNCH AS AGAINST EACH OTHER AND AS AGAINST GRAND CEMENT.[66]

In G.R. No. 177466, Grand Cement set forth the following assignment of errors for our consideration:

I

WHETHER OR NOT JOYCE LAUNCH SHOULD HAVE BEEN IMPLEADED AS ONE OF THE RESPONDENTS HEREIN PURSUANT TO SECTIONS 3 AND 4, RULE 45 OF THE 1997 RULES OF CIVIL PROCEDURE AND SUPREME COURT CIRCULAR NO. 19-91.

II

WHETHER OR NOT THE COURT OF APPEALS ERRED IN CREATING A PREVIOUSLY NON-EXISTENT LEGAL DUTY BY SHIPPERS OF GOODS OR OWNERS OF PIERS TO WARN DOCKED VESSELS OF APPROACHING TYPHOONS AND IN MAKING THE SAME AS ONE OF ITS BASES IN FINDING [GRAND CEMENT] GUILTY OF CONTRIBUTORY NEGLIGENCE.

III

WHETHER OR NOT THE COURT OF APPEALS ERRED IN CREATING A PREVIOUSLY NON-EXISTENT LEGAL DUTY ON AN OWNER OF A PIER TO STATION EMPLOYEES AT SUCH PIER WHEN A TYPHOON HITS AND IN MAKING THE SAME AS ONE OF ITS BASES IN FINDING [GRAND CEMENT] GUILTY OF CONTRIBUTORY NEGLIGENCE.

IV

WHETHER OR NOT THE COURT OF APPEALS ERRED IN REFUSING TO TAKE COGNIZANCE OF THE ISSUES RAISED IN [GRAND CEMENT'S] MOTION FOR RECONSIDERATION, ON THE GROUND THAT ALL THE ISSUES HAD ALREADY BEEN DISCUSSED, WHEN NEITHER ITS ORIGINAL DECISION OR THE AMENDED DECISION HAD RULED ON THE POINTS RAISED IN SAID MOTION FOR RECONSIDERATION.[67]

Ultimately, the question that needs to be resolved by this Court is who, among the parties in this case, should be liable for the damage sustained by the wharf of Grand Cement.

Sealoder assails the Amended Decision of the Court of Appeals insofar as it was found guilty of committing negligent acts that partly caused damage to the wharf of Grand Cement. Instead, Sealoder directly lays the blame on Grand Cement and Joyce Launch.

Sealoder argues that the negligence imputed on its part was not established, thus, it is absolved from any liability. On the contrary, the negligent acts allegedly committed by Grand Cement should bar its recovery of damages in view of the doctrine of last clear chance. Sealoder reiterates that the damage to the wharf was ultimately caused by the failure of Grand Cement to cast off the mooring lines attached to the D/B Toploader at the height of the typhoon. The second sentence of Article 2179 of the Civil Code on contributory negligence was

supposedly inapplicable in the instant case, considering that Sealoader was not negligent at all. Sealoader again insists that the D/B Toploader was entirely dependent on the M/T Viper for movement. Thus, the failure of the M/T Viper to tow the D/B Toploader to safety should not be charged to the latter.

On the other hand, Grand Cement disputes the Court of Appeals' finding in the Amended Decision that it was guilty of contributory negligence, and thus, likewise questions the reduction by 50% of the award of actual damages to be paid by Sealoader.

Ruling

Sealoader contends that Grand Cement had the last clear chance to prevent the damage to the latter's wharf. Had Grand Cement cast off the mooring lines attached to the D/B Toploader early on, the barge could have been towed away from the wharf and the damage thereto could have been avoided. As Grand Cement failed to act accordingly, Sealoader argues that the former was barred from recovering damages.

Grand Cement counters that the determination as to who among the parties had the last clear chance to avoid an impending harm or accident calls for a re-examination of the evidence adduced by the parties. As this Court is not a trier of facts, Grand Cement posits that Sealoader's petition may already be dismissed. Furthermore, Grand Cement asserts that the doctrine of last clear chance cannot aid Sealoader since the doctrine presumes that Sealoader's negligence had ceased and the alleged negligence of Grand Cement came at a later time. Thus, an appreciable time must have intervened, which effectively severed the negligence of Sealoader. Contrarily, Grand Cement maintains that the negligence of Sealoader did not cease, while its own negligence was not proven.

The Court had occasion to reiterate the well-established doctrine of last clear chance in *Philippine National Railways v. Brunty*[68] as follows:

The doctrine of last clear chance states that where both parties are negligent but the negligent act of one is appreciably later than that of the other, or where it is impossible to determine whose fault or negligence caused the loss, the one who had the last clear opportunity to avoid the loss but failed to do so, is chargeable with the loss. Stated differently, the antecedent negligence of plaintiff does not preclude him from recovering damages caused by the supervening negligence of defendant, who had the last fair chance to prevent the impending harm by the exercise of due diligence.[69] (Emphasis ours.)

Upon the other hand, in *Layugan v. Intermediate Appellate Court*,[70] the Court defined negligence as "the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent and reasonable man would not do, or as Judge Cooley defines it, '(T)he failure to observe for the protection of the interests of another person, that degree of care, precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury.'"

Verily, the matter of negligence of either or both parties to a case is a question of fact since a determination of the same "would entail going into factual matters on which the finding of negligence was based." [71] Generally, questions of fact should not be raised in a petition for review.[72] Section 1, Rule 45[73] of the Rules of Court explicitly states that a petition filed thereunder shall raise only questions of law, which must be distinctly set forth.

Jurisprudence has provided for exceptions[74] to this rule, however, one of which is when the findings of fact of the Court of Appeals are contrary to those of the trial court. As will be further elaborated upon, this exception is present in the instant case as the RTC and the Court of Appeals issued contrary findings of fact as to the negligence of Grand Cement. Thus, an examination of the evidence adduced by the parties is warranted under the circumstances.

After a thorough review of the records of this case, the Court finds that Sealoader was indeed guilty of negligence in the conduct of its affairs during the incident in question.

One of the bases cited by the RTC for its finding that Sealoader was negligent was the lack of a radio or any navigational communication facility aboard the D/B Toploader. To recall, Emar Acosta stated in his deposition dated July 9, 1998 that Sealoader was equipped with a handheld radio while the M/T Viper had on board an SSB radio. Marita Santos, on the other hand, explained that Sealoader communicated and transmitted weather forecasts to the M/T Viper through the latter's SSB radio. Before Typhoon Bising hit the province of Cebu on April 4, 1994, Santos stated that Sealoader tried to relay the weather bulletins pertaining to the storm directly with the M/T Viper but the radio signal was always poor. The foregoing statements were put to doubt, however, when Sealoader's own witness, Renee Cayang, stated on cross-examination that there was no radio on board the D/B Toploader. The Court, therefore, agrees with the conclusion of Grand Cement that there was either no radio on board the D/B Toploader, the radio was not fully functional, or the head office of Sealoader was negligent in failing to attempt to contact the D/B Toploader through radio. Either way, this negligence cannot be ascribed to anyone else but Sealoader.

Correlated to the above finding is the manifest laxity of the crew of the D/B Toploader in monitoring the weather. Despite the apparent difficulty in receiving weather bulletins from the head office of Sealoader, the evidence on record suggests that the crew of the D/B Toploader failed to keep a watchful eye on the prevailing weather conditions. Cayang, then the Assistant Barge Patron of the D/B Toploader, admitted that on the afternoon of April 4, 1994, he only stayed inside the officers' station in the barge, waiting for the barge patron to arrive. He testified that nobody notified the crew of the barge of the impending typhoon and the latter knew about the typhoon only when it hit their vessel.

In like manner, Acosta stated in his deposition dated July 9, 1998 that it was not his duty to receive weather forecasts and the said information was gathered only from the crew of the M/T Viper. He was also not aware if Sealoader had records of weather forecasts and how many of such were received. Acosta likewise gave conflicting statements as to how and when he came to know of the typhoon. In his answer to the written cross-interrogatories dated July 9, 1998, Acosta said that he found out about the incoming typhoon when Romulo Diantan told him while the latter was already maneuvering the M/T Viper away from the wharf on April 4, 1994. However, in the Sworn Statement he executed before the Coast Guard Investigation Service Detachment on July 26, 1994, Acosta declared as follow:

32. Q - While on board did you hear any news about the approaching typhoon BISING?

A - Yes about 1100H I heard a news about the typhoon.

33. Q - How were you able to hear about this news of the typhoon approaching?

A - I contacted another tugboat M/T BEEJAY and I heard that the typhoon was still far.

34. Q - Did you inquire from them if San Fernando, Cebu is the path of the incoming typhoon?

A - Yes I tried asking them but they said the place is safe for the incoming typhoon.

35. Q - Did you inform your captain about this typhoon?

A - Yes I informed him but he says the typhoon is far.

36. Q - What was the weather condition during that time 1100H?

A - The weather is fine the sea was calm, but it was cloudy.

x x x x

38. Q -- What did ROMULO DIANTAN do with xxx after 1100H of that day?

A - He stood by at the tugboat.

39. Q - Until what time?

A - Until the time when the wind was becoming strong.

40. Q - What time was this about the wind becoming strong?

A - 1300H of that day I say 1500H not 1300H. [T]hat is 3:00 P.M.

41. Q - What did the captain do at about x x x 1500H?

A - He stood by the main engine for maneuvering.

42. Q - What was the decision of the captain during that time?

A - To pull out the BARGE TOPLOADER from the beaching area of Grand Cement Pier in order to shelter at Sangat, San Fernando.[75] (Emphases ours.)

Unmistakably, the crew of the D/B Toploader and the M/T Viper were caught unawares and unprepared when Typhoon Bising struck their vicinity. According to the Sworn Statement of Acosta, which was taken barely three months after the typhoon, he was already informed of the approaching typhoon. Regrettably, Acosta merely relied on the assurances of the M/T Beejay crew and the opinion of Romulo Diantan that the typhoon was nowhere near their area. As it turned out, such reliance was utterly misplaced. Within a few hours, the weather quickly deteriorated as huge winds and strong waves began to batter the vessels. At the height of the typhoon, the M/T Viper tried in vain to tow the D/B Toploader away from the wharf. Since the barge was still moored to the wharf, the line connecting the same to the M/T Viper snapped and the latter vessel drifted to the Bohol area. The violent waves then caused the D/B Toploader to ram against the wharf, thereby causing damage thereto.

Sealoader cannot pass to Grand Cement the responsibility of casting off the mooring lines connecting the D/B Toploader to the wharf. The Court agrees with the ruling of the Court of Appeals in the Decision dated November 12, 2004 that the people at the wharf could not just cast off the mooring lines without any instructions from the crew of the D/B Toploader and the M/T Viper. As the D/B Toploader was without an engine, casting off the mooring lines prematurely might send the barge adrift or even run the risk of the barge hitting the wharf sure enough. Thus, Sealoader should have taken the initiative to cast off the mooring lines early on or, at the very least, requested the crew at the wharf to undertake the same. In failing to do so, Sealoader was manifestly negligent.

On the issue of the negligence of Grand Cement, the Court of Appeals initially affirmed the ruling of the RTC that the damage to the wharf of Grand Cement was caused by the negligent acts of Sealoader, Joyce Launch and Johnny Ponce. Upon motion of Sealoader, however, the Court of Appeals rendered an Amended Decision, finding that Grand Cement was guilty of contributory negligence. The award of actual damages to Grand Cement was, thus, reduced by 50%.

Article 2179 of the Civil Code defines the concept of contributory negligence as follows:

Art. 2179. When the plaintiff's own negligence was the immediate and proximate cause of his injury, he cannot recover damages. But if his negligence was only contributory, the immediate and proximate cause of the injury being the defendant's lack of due care, the plaintiff may recover damages, but the courts shall mitigate the damages to be awarded.

Contributory negligence is conduct on the part of the injured party, contributing as a legal cause to the harm he has suffered, which falls below the standard to which he is required to conform for his own protection.[76]

We find that, contrary to the judgment of the Court of Appeals in the Amended Decision dated March 3, 2005, Grand Cement was not guilty of negligent acts, which contributed to the damage that was incurred on its wharf.

To recall, the Court of Appeals subsequently found that Grand Cement likewise did not exercise due diligence since it belatedly informed Sealoader of the approaching typhoon and, thereafter, still continued to load another vessel. The Court of Appeals further gave more credence to the claim of Sealoader that there were no employees of Grand Cement manning the pier when the typhoon struck.

The Court holds that Sealoader had the responsibility to inform itself of the prevailing weather conditions in the areas where its vessel was set to sail. Sealoader cannot merely rely on other vessels for weather updates and warnings on approaching storms, as what apparently happened in this case. Common sense and reason dictates this. To do so would be to gamble with the safety of its own vessel, putting the lives of its crew under the mercy of the sea, as well as running the risk of causing damage to the property of third parties for which it would necessarily be liable.

Be that as it may, the records of the instant case reveal that Grand Cement timely informed the D/B Toploader of the impending typhoon. Jaime Nobleza testified that he warned Acosta of the typhoon as early as April 3, 1994 and even advised the latter to move the D/B Toploader to a safer place. On April 4, 1994, Nobleza twice directed Acosta to remove the barge away from the wharf. The first order was given at about 9:00 a.m., while the second was around 2:00 p.m.

In contrast, Acosta again gave contradictory statements regarding the advise of Grand Cement to remove the D/B Toploader away from the wharf. In the deposition of Acosta dated March 16, 1998, he stated that the M/T Viper did not tow the D/B Toploader away from the wharf before the typhoon intensified because there was no instruction from Nobleza to pull out. However, in his Sworn Statement before the Coast Guard, Acosta declared thus:

43. Q - According to the representative of Grand Cement you were notified as early as the morning of April 4, 1994 to pull out your vessel but allegedly you did not do so. What can you say on this?

A - They informed us at about 2:40 P.M. telling me that if ever the typhoon will become stronger we must pull out the barge. I told MR. NOBLEZA about this that we will do so.[77]

Furthermore, the Court cannot subscribe to the ruling of the Court of Appeals in the Amended Decision that Grand Cement was likewise negligent inasmuch as it continued to load the Cargo Lift Tres despite the fast approaching typhoon. Such fact alone does not prove that Grand Cement was oblivious of the typhoon. As testified upon by Nobleza, Sealoader was very much aware of this as he told Marita Santos that the D/B Toploader would only be loaded with its cargo after the loading of the Cargo Lift Tres. The latter vessel was also grounded in shallow waters at that time and already loaded with cement clinkers.

As regards the presence of employees at the wharf during the typhoon, Acosta stated in his deposition dated March 16, 1998 that there was nobody on the wharf to cast off the mooring lines at that time. Nobleza refuted this statement, however, responding that he was present at the wharf during the typhoon, together with a roving guard and four other people from the arrastre. Notably, Sealoader's own witness, Renee Cayang, also contradicted the statement of Acosta, testifying that there were actually stevedores present at the wharf who were in a position to cast off the mooring lines.

In light of the foregoing, the Court finds that the evidence proffered by Sealoader to prove the negligence of

Grand Cement was marred by contradictions and are, thus, weak at best. We therefore conclude that the contributory negligence of Grand Cement was not established in this case. Thus, the ruling of the Court of Appeals in the Amended Decision, which reduced the actual damages to be recovered by Grand Cement, is hereby revoked. Accordingly, the doctrine of last clear chance does not apply to the instant case.

WHEREFORE, the Court hereby rules that:

- (1) The Petition for Review in G.R. No. 167363 is DENIED;
- (2) The Petition for Review in G.R. No. 177466 is GRANTED;
- (3) The Amended Decision dated March 3, 2005 of the Court of Appeals in CA-G.R. CV No. 65083 is REVERSED and SET ASIDE; and
- (4) The Decision dated November 12, 2004 of the Court of Appeals in CA-G.R. CV No. 65083 is REINSTATED.

No costs.

SO ORDERED.

Corona, C.J., (Chairperson), Velasco, Jr., Del Castillo, and Perez, JJ., concur.

[1] Rollo (G.R. No. 167363), pp. 3-27; rollo (G.R. No. 177466), pp. 3-29.

[2] Id. at 29-35; penned by Associate Justice Isaias P. Dicdican with Associate Justices Sesinando E. Villon and Ramon M. Bato, Jr., concurring.

[3] Id. at 80-92; penned by Judge Jose P. Soberano, Jr.

[4] Id. at 37-43; penned by Associate Justice Isaias P. Dicdican with Associate Justices Sesinando E. Villon and Ramon M. Bato, Jr., concurring.

[5] Id. at 38; records, p. 371.

[6] Records, p. 2.

[7] Id. at 21-23.

[8] Id. at 21; paragraph 3 of the Time Charter Party Agreement.

[9] Id. at 1-6.

[10] Id. at 160.

[11] Id. at 8-13.

[12] Id. at 31-37.

[13] Id. at 39.

[14] Id. at 54-56.

[15] Id. at 41-45.

[16] Id. at 64-67.

[17] Id. at 138-140.

- [18] TSN, May 14, 1997, p. 3.
- [19] Id. at 5.
- [20] Id.
- [21] Id. at 12.
- [22] Id. at 20.
- [23] Id. at 21.
- [24] Id. at 22.
- [25] TSN, May 16, 1997, p. 3.
- [26] Id. at 4-5.
- [27] Id. at 6.
- [28] Id. at 12.
- [29] CA rollo, p. 202.
- [30] Records, p. 228.
- [31] Id. at 371-376.
- [32] Id. at 371.
- [33] Id. at 372.
- [34] Id. at 373.
- [35] Id. at 374.
- [36] Id. at 375.
- [37] Id. at 308.
- [38] Id. at 309.
- [39] Id. at 386.
- [40] Id. at 387.
- [41] Id. at 388.
- [42] Rollo (G.R. No. 167363) pp. 302-307.
- [43] Records, p. 311.
- [44] Id. at 312.
- [45] TSN, November 4, 1998, p. 3.
- [46] Id. at 4.
- [47] Id. at 5.
- [48] Id. at 6.

[49] Id. at 8.

[50] Id. at 11.

[51] Id. at 12.

[52] TSN, December 9, 1998, p. 3.

[53] Id. at 4.

[54] Id. at 5.

[55] Id. at 6.

[56] Id. at 7.

[57] Id. at 10.

[58] Rollo (G.R. No. 167363), pp. 90-92.

[59] Id. at 40.

[60] Id. at 40-43.

[61] Id. at 106-111.

[62] Id. at 33-34.

[63] Id. at 139-159.

[64] CA rollo, pp. 248-249.

[65] Rollo (G.R. No. 177466), p. 277.

[66] Rollo (G.R. No. 167363), pp. 228-229.

[67] Rollo (G.R. No. 177466), p. 213.

[68] G.R. No. 169891, November 2, 2006, 506 SCRA 685.

[69] Id. at 701.

[70] G.R. No. L-73998, November 14, 1988, 167 SCRA 363, 372-373.

[71] *Philippine National Railways v. Brunty*, supra note 68 at 697.

[72] *Cordial v. Miranda*, 401 Phil. 307, 316 (2000).

[73] SEC. 1. Filing of petition with Supreme Court. - A party desiring to appeal by certiorari from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition may include an application for a writ of preliminary injunction or other provisional remedies and shall raise only questions of law, which must be distinctly set forth. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.

[74] The exceptions are when: (1) the conclusion is a finding grounded entirely on speculation, surmise and conjecture; (2) the inference made is manifestly mistaken; (3) there is grave abuse of discretion; (4) the judgment

is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) the CA went beyond the issues of the case and its findings are contrary to the admissions of both appellant and appellees; (7) the findings of fact of the CA are contrary to those of the trial court; (8) said findings of fact are conclusions without citation of specific evidence on which they are based; (9) the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) the findings of fact of the CA are premised on the supposed absence of evidence and contradicted by the evidence on record. (Rosario v. PCI Leasing and Finance, Inc., 511 Phil. 115, 123-124 [2005], citing Sarmiento v. Court of Appeals, 353 Phil. 834, 846 [1998].)

[75] Rollo (G.R. No. 167363), pp. 303-304.

[76] Philippine National Railways v. Brunty, *supra* note 68.

[77] Rollo (G.R. No. 167363), p. 304.

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